

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

(1) PATRICIA D. BACHHOFER, an)
Individual,)
Plaintiff,)
vs.) Case No. CIV-04-969-F
(1) G. PAUL KULA, M.D., an)
Individual,)
Defendant.)

**DEFENDANT'S UNOPPOSED MOTION TO
CANCEL REFERRAL TO MEDIATION**

COMES NOW the defendant, G. Paul Kula, M.D., and pursuant to LCvR 16.3(d), moves the court to enter an order cancelling the referral of this case to mediation. In support of this motion, defendant states:

1. Pursuant to the agreement of the parties at the scheduling conference, this case was referred to mediation to be completed by January 10, 2005. Mediation with mediator, Earl D. Mills, is presently set for January 7, 2005.
2. This lawsuit involves allegations that the defendant, G. Paul Kula, M.D., negligently engaged in a romantic and sexual relationship with the plaintiff while she was seeking psychiatric treatment from him. Dr. Kula denies the plaintiff's allegations.
3. At the time of the alleged events, Dr. Kula was employed by Mercy Memorial Health Center, Inc., in Ardmore, Oklahoma. As an employed physician, he was an indemnitee of the Sisters of Mercy, St. Louis, Pooled Comprehensive Liability Program, which is a self-funded program designed to provide a mechanism to defend liability claims.

4. Mercy has now advised counsel for Dr. Kula that there is no coverage for the claims against Dr. Kula in this case under the terms of the Pooled Comprehensive Liability Program. As such, Mercy is unwilling to contribute any money towards settlement of plaintiff's claims against Dr. Kula. In addition, Dr. Kula does not have the financial resources to make any meaningful settlement offer to the plaintiff in this case.

5. Since there will be no money available to contribute towards a settlement in this case, the parties have agreed that mediation would be a waste of time and money and should therefore be cancelled.

6. Defendant's counsel is authorized to state that plaintiff's counsel has no objection to this motion.

WHEREFORE, defendant, G. Paul Kula, M.D., requests the court to enter an order authorizing the cancelling of the scheduled mediation in this case.

s/Michael S. McMillin

STEPHEN PETERSON OBA No. 7085
MICHAEL S. McMILLIN OBA No. 12404
FENTON, FENTON, SMITH, RENEAU & MOON
211 North Robinson Avenue - Suite 800N
Oklahoma City, Oklahoma 73102-7106
Telephone: 405/235-4671
Facsimile: 405/235-5247
E-Mail Addresses for Service:
sbpeterson@fentonlaw.com
msmcmillin@fentonlaw.com

ATTORNEYS FOR DEFENDANT,
G. PAUL KULA, M.D.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on the 30th day of December, 2004, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following registrants:

Michael G. Smith OBA #8389
SMITH, SHEW, SCRIVNER, CORBIN & WATTS, P.C.
120 East 14th Street
Post Office Box 1373
Ada, Oklahoma 74821-1373
Telephone: 580/332-9033
Facsimile: 580/332-9291
E-Mail Address for Service:
sscw@cableone.net

ATTORNEY FOR PLAINTIFF

Dixie L. Coffey OBA #11876
Charles J. Watts OBA #9403
SMITH, SHEW, SCRIVNER, CORBIN & WATTS, P.C.
1001 N.W. 63rd Street - Suite 101
Oklahoma City, Oklahoma 73116
Telephone: 405/842-5022
Facsimile: 405/842-4993
E-Mail Addresses for Service:
dixielcoffey@aol.com
cjwattslaw@yahoo.com

ATTORNEYS FOR PLAINTIFF.

s/Michael S. McMillin
STEPHEN PETERSON/MICHAEL S. McMILLIN